

These are the tentative rulings for civil law and motion matters set for Thursday, February 26, 2015, at 8:30 a.m. in the Placer County Superior Court. The tentative ruling will be the court's final ruling unless notice of appearance and request for oral argument are given to all parties and the court by 4:00 p.m. today, Wednesday, February 25, 2015. Notice of request for oral argument to the court must be made by calling (916) 408-6481. Requests for oral argument made by any other method will not be accepted. Prevailing parties are required to submit orders after hearing to the court within 10 court days of the scheduled hearing date, and after approval as to form by opposing counsel. Court reporters are not provided by the court. Parties may provide a court reporter at their own expense.

NOTE: Effective July 1, 2014, all telephone appearances will be governed by Local Rule 20.8. More information is available at the court's website, www.placer.courts.ca.gov.

EXCEPT AS OTHERWISE NOTED, THESE TENTATIVE RULINGS ARE ISSUED BY COMMISSIONER MICHAEL A. JACQUES AND IF ORAL ARGUMENT IS REQUESTED, ORAL ARGUMENT WILL BE HEARD IN DEPARTMENT 40, LOCATED AT 10820 JUSTICE CENTER DRIVE, ROSEVILLE, CALIFORNIA.

1. M-CV-0061028 Cota Cole LLP vs. Perrotta, Charles

This tentative ruling is issued by the Honorable Michael W. Jones. If oral argument is requested, such argument shall heard in Department 43:

Defendant Charles Perrotta's Demurrer to the Complaint

A party may demur to a complaint where the pleading does not state facts sufficient to constitute a cause of action. (CCP§430.10(e).) A demurrer tests the legal sufficiency of the pleadings, not the truth of the plaintiff's allegations or accuracy of the described conduct. (*Bader v. Anderson* (2009) 179 Cal.App.4th 775, 787.) As such, the allegations in the pleadings are deemed to be true no matter how improbable the allegations may seem. (*Del E. Webb Corp. v. Structural Materials Co.* (1981) 123 Cal.App.3d 593, 604.) The current action stems from an alleged breach of an attorney fee agreement. The form and content of legal fee agreements are governed by statute, which are meant to protect clients to ensure the agreements are fair and understandable. (B&P§6146 et seq.; see *Alderman v. Hamilton* (1988) 205 Cal.App.3d 1033, 1037.) Legal fee agreements generally must be in writing. (see B&P§§6147, 6148(a), (d)(4).) The first cause of action alleges a claim for breach of the fee agreement. However, it fails to sufficiently establish that the agreement was written.

Further, an attorney must provide his or her client notice of the right to arbitrate and the failure to provide such notice subjects the action to dismissal. (B&P§6201(a); *Aheroni v. Maxwell* (1988) 205 Cal.App.3d 284, 294-295.) Neither the first cause of

action for breach of contract nor the second cause of action for common counts allege that defendant was noticed of his right to arbitrate prior to commencing the action. For these reasons, both causes of action are insufficiently pled and the demurrer is sustained with leave to amend.

The first amended complaint shall be filed and served on or before March 6, 2015.

2. M-CV-0063068 Ponderosa Terrace, LLC vs. Palmer, Jana Marie

The motion to strike is continued to March 5, 2015 at 8:30 a.m. in Department 40.

3. S-CV-0026760 Yanez, Michael vs. Union Pacific Railroad Co., et al

This tentative ruling is issued by the Honorable Garen J. Horst. If oral argument is requested, such argument shall be heard on 8:30 a.m. in Department 2 located at the Historic Auburn Courthouse:

Defendant Union Pacific Railroad Company's (UPRR's) Demurrer to the Third Amended Complaint (TAC)

As an initial matter, the court notes that plaintiff has abandoned his fourth cause of action for intentional misrepresentation/fraud against UPRR. Since plaintiff has expressly abandoned this claim and fails to oppose the demurrer, the court sustains the demurrer to the fourth cause of action without leave to amend.

The remaining cause of action subject to UPRR's demurrer is the first cause of action for wrongful discharge in violation of public policy. A party may demur to a complaint where the pleading does not state facts sufficient to constitute a cause of action. (CCP§430.10(e).) A demurrer tests the legal sufficiency of the pleadings, not the truth of the plaintiff's allegations or accuracy of the described conduct. (*Bader v. Anderson* (2009) 179 Cal.App.4th 775, 787.) As such, the allegations in the pleadings are deemed to be true no matter how improbable the allegations may seem. (*Del E. Webb Corp. v. Structural Materials Co.* (1981) 123 Cal.App.3d 593, 604.) Upon review of the allegations in the TAC and reading them as a whole, plaintiff has alleged sufficient facts to support the first cause of action as it pertains to UPRR.

To reiterate, the demurrer is sustained without leave to amend as to the fourth cause of action for intentional misrepresentation/fraud asserted against UPRR. The demurrer is overruled as to the first cause of action for wrongful discharge in violation of public policy.

Any answer or general denial shall be filed and served on or before March 6, 2015.

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Defendant UPRR's Motion to Strike the TAC

UPRR's unopposed motion is granted. A party may file a motion to strike the whole pleading or a portion of a pleading. (CCP§435(b)(1).) A motion to strike may be granted to strike irrelevant, false, or improper matters in a pleading; or to strike a pleading not drawn in conformity with the laws of the state or an order of the court. (CCP§436(a), (b).) The grounds for a motion to strike must appear on the face of the pleading or from judicially noticeable matters. (CCP§437(a).) Upon review of the language objected to by UPRR and when reading the third amended complaint as a whole, the challenged language is false and/or improper so as to be properly stricken from the pleading.

4. S-CV-0027248 Davies, A. vs. Martinez, G.

This tentative ruling is issued by the Honorable Charles D. Wachob and oral argument shall be held at 8:30 a.m. in Department 42:

The appearances of the parties are required for the hearing on defendant's Motion for Summary Judgment.

Both parties' requests for telephonic appearances are granted. In this instance, the court will call plaintiff and defendant's counsel at the time the matter is called for hearing.

5. S-CV-0028222 Exclusive Resorts, LLC vs. Board of Super. Placer County

This tentative ruling is issued by the Honorable Charles D. Wachob. If oral argument is requested, it shall be heard in Department 42:

Further Hearing on Request to Seal Portions of the Administrative Record

The parties' request to seal portions of the administrative record pursuant to the stipulation filed on January 22, 2015 is granted. Court records are presumed to be open to the public unless confidentiality is required by law. (*California Rules of Court, Rule 2.550(c)*.) The court, however, may order a record to be filed or lodged under seal upon express findings of fact that establish: (1) an overriding interest that overcomes the public's right to access; (2) an overriding interest supporting sealing the record; (3) a substantial probability that the overriding interest will be prejudiced if the record is not sealed; (4) the sealing of the record is narrowly tailored; and (5) there are no less restrictive means to achieve the overriding interest. (*California Rules of Court, Rule 2.550(d)*.) The parties seek to seal 21 separate documents with the following Bates stamp designations: (1) 208-210; (2) 215-218; (3) 223-226; (4) 231-234; (5) 239-242; (6) 244; (7) 301-317; (8) 321-340; (9) 345-366; (10) 463-487; (11) 580-596; (12) 600-619; (13) 623-644; (14) 648-672; (15) 741-764; (16) 832-847; (17) 856-873; (18) 877-880; (19)

884-887; (20) 891-894; and (21) 898-901. The majority of these documents consist of financial records. There is also client membership information, a copy of a lease agreement, and a copy of service agreement schedule attachments. Petitioner asserts that these documents include confidential and proprietary information. (Neal declaration ¶¶3, 4.) It also contends that the disclosure of these documents would be detrimental to its ongoing business operations since competitors would be able to use this confidential information, removing petitioner's ability to remain competitive in the industry. (Ibid.)

Courts have recognized that financial information may be an overriding interest that overcomes the public's right to access. (*Overstock.Com, Inc. v. Goldman Sachs Group, Inc.* (2014) 231 Cal.App.4th 471, 504-506; *Universal City Studios v. Superior Court* (2003) 110 Cal.App.4th 1273, 1275.) Proprietary interests such as trade secrets have also been found to be an overriding interest overcoming public access. (see *NBC Subsidiary (KNBC-TV), Inc. v. Superior Court* (1999) 20 Cal.4th 1178, 1222, fn. 46; *Publicker Industries, Inc. v. Cohen* (1984) 733 F.2d 1059, 1073.) The disclosure of these financial documents and proprietary industry information may result in financial loss along with threatening the competitiveness and operational viability of petitioner's business. In balancing the considerations of the petitioner with those of the public and in light of the circumstances here, the court finds there is an overriding interest that overcomes the right to public access that supports sealing of these identified Bates stamped documents. The court further finds there is a substantial probability that the identified overriding interests will be prejudiced if these documents are not sealed and the sealing of these identified documents is the least restrictive means to achieve the overriding interest in this case. Based upon the foregoing, the court grants the motion and authorizes the unredacted copies of the administrative record be sealed with redacted versions available to the public.

This order is made subject to any person making a motion to unseal the documents in accordance with California Rules of Court, Rule 2.551(h).

6. S-CV-0030314 Belisle, David, et al vs. Centex Homes, et al

Cross-defendants' demurrer and motion to strike the first amended cross-complaint are continued, on the court's own motion, to Tuesday, March 3, 2015 at 8:30 a.m. in Department 42 to be heard by the Honorable Charles D. Wachob.

7. S-CV-0031530 Moore, Gregory M vs. Wells Fargo Bank, N.A. et al

The court notes that briefing for a demurrer to the third amended complaint was filed with the court. However, the demurrer was not calendared by the clerk. The court apologizes to the parties for the inconvenience and continues the demurrer to March 12, 2015 at 8:30 a.m. in Department 40.

Defendant's Motion for Protective Order re: Deposition of Michael Heid

The motion is granted pursuant to CCP§2025.420(b). Plaintiff is prohibited from proceeding with the deposition of Michael Heid.

Defendant's Motion for Protective Order re: Deposition of Lisa Beens

The motion is denied. Plaintiff's request for sanctions is denied.

8. S-CV-0032982 MTAD Investments Inc., et al vs. True North Bridged Tech.

The two motions to deem requests for admissions admitted are dropped from the calendar at the request of the moving party.

9. S-CV-0033242 Holmes, Bob vs. Weiler, Steve, et al

The motion for summary judgment is continued to March 5, 2015 at 8:30 a.m. in Department 42. The court apologizes to the parties for any inconvenience.

10. S-CV-0033382 Frere Enterprises vs. Adams, George

This tentative ruling is issued by the Honorable Michael W. Jones. If oral argument is requested, such argument shall heard in Department 43:

Plaintiff's Motion to Fix Attorney's Fees is denied without prejudice. The motion was originally set for January 29, 2015 but was continued to afford plaintiff an opportunity to show that defendant was properly served with the motion and to explain discrepancies between the fees requested in the motion as compared to statements made in plaintiff's trial brief. Plaintiff has failed to submit a proper proof of service for the motion despite being afforded an opportunity to remedy this deficiency. The court also notes that plaintiff fails to provide a proof of service for the supplemental briefing. Further, the email attached to the Wahl declaration shows that defendant was not provided with sufficient notice of the hearing date since it afforded him only 11 court days notice. Since plaintiff is unable to establish the basic procedural requirements of notice and service, the court is unable to reach the merits of the motion at this time.

11. S-CV-0033957 Markham, David, et al vs. BBC Ventures, LLC, et al

Plaintiffs' unopposed Motion for Terminating Sanctions against defendants BBC Ventures and Chris Coulter is granted. Defendants' answer, filed on April 1, 2014, is stricken.

12. S-CV-0034022 Hammons, Darion, et al vs. Dry Creek Joint Ele. School, et al

Defendant's Motion to Strike is granted with leave to amend. A party may file a motion to strike the whole pleading or a portion of a pleading. (CCP§435(b)(1).) A

motion to strike may be granted to strike irrelevant, false, or improper matters in a pleading; or to strike a pleading not drawn in conformity with the laws of the state or an order of the court. (CCP§436(a), (b).) The grounds for a motion to strike must appear on the face of the pleading or from judicially noticeable matters. (CCP§437(a).) Upon review, the allegations in the first amended complaint are insufficient to support punitive damages.

The first amended complaint shall be filed and served on March 6, 2015.

13. S-CV-0034296 U.S. Bank, N.A. vs. NNN Parkway Corporate Plaza, LLC, et al

The appearances of the parties are required on the further hearing regarding bond amount and the CMC.

14. S-CV-0034730 New Direction IRA, Inc. vs. French, Stephen Roark, et al

Defendants' Demurrer to the First Amended Complaint

The demurrer is sustained with leave to amend. A party may demur to a complaint where the pleading does not state facts sufficient to constitute a cause of action. (CCP§430.10(e).) A demurrer tests the legal sufficiency of the pleadings, not the truth of the plaintiff's allegations or accuracy of the described conduct. (*Bader v. Anderson* (2009) 179 Cal.App.4th 775, 787.) As such, the allegations in the pleadings are deemed to be true no matter how improbable the allegations may seem. (*Del E. Webb Corp. v. Structural Materials Co.* (1981) 123 Cal.App.3d 593, 604.) Defendants challenge the sixth cause of action for imposition of constructive trust. A constructive trust may only be imposed upon specific property and cannot be imposed where the plaintiff is entitled to recovery of money due based upon the terms of a contract. (*Deane v. Superior Court* (1985) 164 Cal.App.3d 292, 296, 297.) The allegations in the FAC do not sufficiently identify the specific property subject to a constructive trust so the sixth cause of action fails.

The second amended complaint shall be filed and served on March 6, 2015.

Defendants' Motion to Strike Portions of the First Amended Complaint

The motion is granted with leave to amend. A party may file a motion to strike the whole pleading or a portion of a pleading. (CCP§435(b)(1).) A motion to strike may be granted to strike irrelevant, false, or improper matters in a pleading; or to strike a pleading not drawn in conformity with the laws of the state or an order of the court. (CCP§436(a), (b).) The grounds for a motion to strike must appear on the face of the pleading or from judicially noticeable matters. (CCP§437(a).) Upon review, the FAC does not allege sufficient allegations to support attorney's fees, damages based upon emotional distress, or general pain and suffering damages.

The second amended complaint shall be filed and served on March 6, 2015.

15. S-CV-0035012 Fagundes, Patrick vs. JPMorgan Chase Bank, NA, et al.

Defendant's Demurrer to the Complaint

Defendant's Demurrer is dropped from the calendar. A first amended complaint was filed on February 13, 2015.

Defendant's Motion to Expunge Lis Pendens

While the current motion was pending, plaintiff filed a first amended complaint. Since the review of a motion to expunge includes a review of the operative complaint to determine whether a claim for real property exists, the parties are afforded an opportunity to present supplemental briefing in light of the first amended complaint. Any supplemental briefing shall be filed and served on or before March 13, 2015. The hearing on defendant's motion is continued to March 26, 2015 at 8:30 a.m. in Department 40.

16. S-CV-0035296 Brummer, Toby, et al vs. Bank of America, N.A., et al

The demurrer is dropped from the calendar. A notice of taking the demurrer off calendar was filed by defendant on February 24, 2015.

17. S-CV-0035418 Lake Tahoe Partners, LLC vs. Smith, Michelle

The motion for reconsideration is dropped from the calendar at the request of the moving party.

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